

IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

COMPLETE TITLE OF CASE

STATE OF MISSOURI ex rel. IDEKER, INC., and MISSOURI DEPARTMENT OF
NATURAL RESOURCES,

Relators,

v.

THE HONORABLE KENNETH R. GARRETT III, Judge of the Circuit Court of Jackson
County, Missouri,

Respondent.

DOCKET NUMBER WD78674
(Consolidated with WD78678)

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: July 14, 2015

ORIGINAL PROCEEDING IN PROHIBITION

JUDGES

Writ Division: Pfeiffer, P.J., and Howard and Welsh, JJ.

CONCURRING.

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MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

STATE OF MISSOURI ex rel. IDEKER,)
INC., and MISSOURI DEPARTMENT OF)
NATURAL RESOURCES,)

Relators,)

v.)

THE HONORABLE KENNETH R.)
GARRETT III, Judge of the Circuit Court)
of Jackson County, Missouri,)

Respondent.)

OPINION FILED:
July 14, 2015

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ORIGINAL PROCEEDING IN PROHIBITION

Before Division Writ Judges: Mark D. Pfeiffer, Presiding Judge, and Victor C. Howard
and James Edward Welsh, Judges

Ideker, Inc. ("Ideker") and the Missouri Department of Natural Resources ("MDNR") filed petitions in prohibition against the Honorable Kenneth R. Garrett III, Jackson County Circuit Judge ("Respondent"), in response to Respondent's Order denying Ideker's and MDNR's motions to dismiss the underlying lawsuit styled *Concerned Citizens for AIR, Inc., et al., Plaintiffs v. Missouri Department of Natural Resources, et al., Defendants* ("Underlying Lawsuit").

Concerned Citizens for AIR, Inc. and the City of Grandview, Missouri (collectively, "Grandview"), asserted that MDNR unlawfully approved an air emissions permit, which failed to meet lawful air quality emission requirements, for Ideker's operation of a portable hot mix asphalt plant in Kansas City, Missouri. The petition also alleged that MDNR intended to issue another permit to Ideker to authorize a permanent stationary asphalt plant in the same location. Grandview requested judicial review of MDNR's determination to approve the permit for the portable plant, an order vacating that permit, and an order enjoining the issuance of a permit for the permanent plan.

In their motions to dismiss, Ideker and MDNR each asserted that Respondent has no statutory authority to judicially review Grandview's claims because Grandview did not exhaust their administrative remedies. Each further asserted that a justiciable controversy no longer exists for resolution because both the remedies sought by Grandview have been rendered moot by the issuance of a permanent permit to Ideker.

This Court ordered the writ cases consolidated and stayed any proceedings in the Underlying Lawsuit until further order. We now lift the stay and enter our peremptory writ of prohibition. Respondent is ordered to vacate his Order and enter an order dismissing Grandview's petition.

PEREMPTORY WRIT OF PROHIBITION ISSUED; CASE REMANDED.

Writ Division holds:

Any person or entity aggrieved by an MDNR permit decision may appeal by filing a petition with the Administrative Hearing Commission ("AHC"). The AHC hearing officer's recommendation and record are reviewed by the Air Conservation Commission ("ACC"), and the ACC issues a final, written determination, which includes findings of fact and conclusions of law. All final orders or determinations of the ACC are subject to judicial review. However, no judicial review is available unless and until all administrative remedies are exhausted. The exhaustion of administrative remedies requirement does not apply if a person brings a declaratory judgment action attacking the validity of an agency rule.

Grandview is not challenging the legal authority of MDNR to issue asphalt plant permits nor is it challenging the validity of an agency rule—it is challenging MDNR's *decision* to issue a permit for the operation of Ideker's asphalt plant under the specific *facts* of this specific permit application as governed by relevant state and federal environmental regulations. Statutory authority to hear an appeal of a permit *decision* by the MDNR is vested in the AHC.

Because Grandview challenges an agency *decision* and not an agency *rule*, section 536.050.1, RSMo, does not authorize them to bring a declaratory judgment action in the circuit court. Therefore, the circuit court had no statutory authority to entertain the Underlying Lawsuit.

Opinion by: Mark D. Pfeiffer, Judge

July 14, 2015

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THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.